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Supreme Court of the United States

October Term, 1958

No. 10

UNITED STATES OF AMERICA,
Petitioner

v.

SEABOARD AIR LINE RAILROAD COMPANY,
Respondent

Brief in Opposition to Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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No. 540

UNITED STATES OF AMERICA,

Petitioner

v.

SEABOARD AIR LINE RAILROAD COMPANY,

Respondent

Brief in Opposition to Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

STATEMENT OF THE CASE

This action began when Petitioner brought a civil suit in the United States District Court for the Eastern District of Virginia against Respondent to collect the statutory forfeiture for Respondent's failure to use connected air brakes in its Hopewell, Virginia, yard operations on four different occasions on March 5 and 6, 1956. This failure was said to violate Section 2 of the Act of March 2, 1903 (45 U. S. C. 9). After a hearing on the merits without a jury, the District Court dismissed the suit and entered final judgment for Respondent on July 3, 1957. Petitioner appealed to the United States Court of Appeals for the Fourth Circuit. That Court affirmed the District Court, Chief

Judge Sobeloff dissenting in part, on June 30, 1958. Petitioner seeks a writ of certiorari from this Court to review the decision of the Court of Appeals for the Fourth Circuit.

QUESTION PRESENTED

Should this court grant a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit holding that the railroad operations complained of were not "train" movements?

STATEMENT OF FACTS

Petitioner's statement of facts, while accurate as far as it goes, omits certain other facts which should be considered by this Court before ruling on the request for a writ. The printed appendix to Respondent's brief below, nine copies of which were filed by Petitioner with its petition, will be referred to as "D. R."

Hopewell, Virginia, is at the end of a spur line running from Bellwood, near Richmond, on Seaboard's main line of railroad. The Seaboard tracks do not run beyond Hopewell. No passenger trains run between Bellwood and Hopewell. Trains from Bellwood terminate at the Hopewell classification yard where they are broken up. From there the cars are switched by switch engines and switching crews to the various industries in Hopewell, and only switching operations take place within the Hopewell yard limits (D. R. 13).

At the same time an Interstate Commerce Commission inspector noted these violations he noted several other similar movements in Respondent's Hopewell Yard. He made no report of them because he thought the ones noted would be easier to prove, since they were longer movements than the others, even though the function of the movements was the same (D. R. 9, 12). Tracks of the Norfolk & Western

Railway immediately parallel Respondent's tracks, and movements on them are made without air brakes. However, the inspector reported no violations by the Norfolk & Western (D. R. 4, 27).

ARGUMENT

I.

The Previous Decisions of This Court as to When the Air Brake Provisions of the Safety Appliance Act Apply Are Clear and Do Not Need To Be Restated.

Petitioner argues in its brief that it is necessary for this Court to grant a writ of certiorari to review this case, because conflict and confusion exists among the circuits, and the Safety Appliance Act is not being properly applied. Whether this conflict is more imagined than real will be explored later. Respondent submits that the decisions of this Court are explicit and free from ambiguity and that if any difficulty in their application exists it is because the factual situation differs from case to case and not because of any want of clarity in the decisions themselves.

The applicable sections of the Safety Appliance Act as supplemented by the I. C. C. order of June 6, 1910, are set out in full in the Government's petition and need not be repeated here.

The question presented may be simply stated, "What is a train?" Neither the Act nor the I. C. C. order defines what a train is in the context of the statute. This Court, however, in two cases decided over forty years ago has very clearly defined a train within the meaning of the Act and the order.

In *United States* v. *Erie R. R. Co.*, 237 U. S. 402 (1915), this Court considered the application of this portion of the Safety Appliance Act for the first time. The defendant had

argued that certain movements between one place of break up or assembly of its trains and another similar place in the New York harbor area were not trains within the meaning of the Act so as to require their air brakes to be connected. This Court defined a train in this context and pointed out the circumstances under which the Act would not apply, at pp. 407-8:

> "It will be perceived that the air-brake provision deals with running a train, while the other requirements relate to hauling or using a car. In one a train is the unit and in the other a car. As the context shows, a train in the sense intended consists of an engine and cars which have been assembled and coupled together for a run or trip along the road. When a train is thus made up and is proceeding on its journey it is within the operation of the air-brake provision. *But it is otherwise with the various movements in railroad yards whereby cars are assembled and coupled into outgoing trains and whereby incoming trains which have completed their run are broken up. These are not train movements but mere switching operations and so are not within the air-brake provision . . .*" (Emphasis supplied)

This language is certainly clear. Engines and cars coupled for a run along the road are subject to the Act; movements within a yard where trains are broken up and switched after the completion of their road run are not subject to the Act.

United States v. *Chicago, Burlington & Quincy R. Co.*, 237 U. S. 410 (1915), was decided just a week after the *Erie* case, *supra*. The *Erie* case recognizes that there are movements of railroad cars which are not subject to the air-brake provisions of the Safety Appliance Act. The *Burlington* case carries the distinction one step further and poses the test which the courts must apply in determining in which

of the categories described by the *Erie* case a particular movement falls.

The test is found at p. 413:

> ". . . Neither is it material that the men in charge were designated as yard or switching crews, for *the controlling test of the statute's application lies in the essential nature of the work done* rather than in the names applied to those engaged in it." (Emphasis supplied)

How could this Court put it more clearly and succinctly? If the essential nature of the work done is switching, then the Act does not apply. If the essential nature of the work done is a road movement, or a transfer movement of cars from one terminal or yard to another, as in *Louisville & Jeffersonville Bridge Company* v. *United States*, 249 U. S. 534 (1919), then the Act does apply and the air-brakes must be connected. The *Erie* points up the distinction between switching movements which fall outside the Act and other movements; the *Burlington* case supplies the test to determine whether a given movement is a switching movement or not.

The court below in this case specifically applied the "nature of the work done" test. The majority said, *United States* v. *Seaboard Air Line Railroad Company*, 258 F. 2d 262 (1958), at pp. 266, 267:

> "The classification of cars, narrowly considered, is but one of several exempt switching activities. Spotting cars upon a team track alongside classification tracks is equally exempt. *Delivering cars to spurs is no less typical of switching than classification, and the considerations which exclude the one from the train brake requirements are applicable to the other.* Movements over the lead track, from one spur requiring

> attention to the next, are an inseparable part of the switching activity, when the lead track is used, in fact, as an integral part of a yard in which the cars have been received or from which they are to be dispatched. Nor can we say, having due regard for the nature of the track, its connections and its use, that two miles is an unreasonable distance to travel without train brakes, *when the 'nature of the work done' is so clearly switching.*" (Emphasis supplied)

Of course there will be times when the "nature of the work done" test will be difficult to apply to a given movement because of the variety of train movements. The court below recognized this at p. 206 of its opinion when it pointed out:

> "But movements of trains and cars are so varied that the distinction between the fast, through train and the simplest switching operation are not always easily applied. . . ."

In other words, the courts find that the test is clear enough; the source of difficulty is not in the test itself but in the many different factual situations to which the test must be applied. Because the test is clear, Respondent submits that this Court should deny the petition for a writ of certiorari. It will serve no useful purpose for this Court to restate what is already perfectly clear.

II.

Asserted Conflicts in the Circuits Do Not Warrant the Granting of a Writ of Certiorari in This Case

This Court last term granted writs of certiorari in two cases involving the Federal False Claims Act, *United States v. Mc Ninch*, 355 U. S. 808 (1957), and *Rainwater v.*

United States, 355 U. S. 811 (1957). In the *McNinch* case, the Court of Appeals for the Fourth Circuit had held that a false claim submitted to the Commodity Credit Corporation was not a claim against the government within the meaning of the False Claims Act. In the *Kaiser* case, the Court of Appeals for the Eighth Circuit had held that a false claim submitted to the Commodity Credit Corporation did fall within the Act. This Court granted the petitions for certiorari and upheld the Eighth Circuit and reversed the Fourth Circuit, *Kaiser* v. *United States*, 356 U. S. 390 (1958); *United States* v. *McNinch*, 356 U. S. 595 (1958).

This is a typical example of the purpose for which this Court's jurisdiction to review cases by writ of certiorari is intended. In those cases two circuits had reached directly conflicting results on the identical question of law, *i. e.*, whether a claim against the Commodity Credit Corporation falls within the False Claims Act.

Here there is no such conflict between the circuits. If one circuit were to decide that the essential nature test of the *Burlington* case should be abandoned and another circuit were to disagree, then a classic example of a conflict warranting the granting of a writ would be presented.

The circuits agree on what the test is and how it should be applied, and the asserted conflicts occur because of the difficulty of applying the test to the many varied situations which per force must arise in an industry where geography, terrain, local industries, and a host of other factors determine the locale and operations of a railroad yard and necessitate its being somewhat dissimilar to every other railroad yard.

It is also suggested that the decision below is in conflict with this Court's decision in *United States* v. *Northern Pacific Railway Company*, 254 U. S. 251 (1920), and that

this furnishes even more reason for granting a writ. In the *Northern Pacific* case this Court specifically found, at p. 253:

> ". . . These four miles of railroad [the tracks over which the movements in controversy occurred] owned by the Northern Pacific *are not used by it for switching or assembling cars.* The switching, assembling and classification of cars for its through and local freight is done in the Rice's Point yard where there are fifty-five tracks. . . ." (Emphasis added.)

But in the instant case the evidence is clear that the tracks in question were used solely for switching operations. Both the District Court and the Court of Appeals so found. Thus, not only is this case distinguishable from the *Northern Pacific* case, the *Northern Pacific* case falls in an entirely different category—a transfer movement between two terminals or yards in which the assembly or break up is performed.

Petitioner also contends at p. 11 of its brief that a writ should be granted because the Interstate Commerce Commission has advised that the decision below hampers effective enforcement of an important safety measure. It is striking that the Government fails to divulge the source of, or quote, this "advice" which it claims to have received from the I. C. C. Is it not because it knows that on the record no other conclusion could have been reached by the District Court and the Court of Appeals that the Government finds it necessary to rely on alleged "advice" from the I. C. C. which was not offered in evidence and would have been so clearly inadmissible?

In the past ten years seven cases involving this provision in the Safety Appliance Act have reached the various Courts of Appeal. Petitioner asserts that these cases are in such hopeless conflict that this Court should grant a writ of

certiorari to reconcile them. Respondent submits that the decisions are not in conflict but are all properly decided in view of the vastly differing factual situations presented.

This Court denied petitions for a writ of certiorari in two of these cases, *United States* v. *South Buffalo R. Co.*, 168 F. 2d 948 (1948), *cert. den.* 335 U. S. 870 (1948), and *United States* v. *Chicago, Burlington & Quincy R. Co.*, 199 F. 2d 223 (7th Cir. 1952), *cert. den.* 345 U. S. 908 (1953). In the *South Buffalo* case the Government prevailed, while in the *Burlington* case the railroad prevailed. Although the two cases reached different results on somewhat similar facts, this Court apparently felt that they were both correctly decided and presented no conflict between the circuits. By the same token the present case presents no conflict between the circuits.

The United States prevailed in three of these seven cases decided in the past ten years. In *United States* v. *Thompson*, 252 F. 2d 6 (8th Cir. 1958), cars were moved intact for three miles. One mile and a quarter of this movement was over main line tracks. The Eighth Circuit held that these movements were transfer movements and not switching movements, saying, at p. 9:

> "It is our understanding that when cars are assembled at one point in a railroad terminal and moved intact a considerable distance for delivery at another point in the same terminal, the movement is not a switching operation but is, as a matter of law, a train movement, and particularly so when main line tracks are used or crossed."

This language indicates that the *Thompson* case is distinguishable on its facts from the instant case. The *Thompson* case merely affirms what this Court said in the *Louisville*

Jeffersonville case, *supra*: a transfer movement, transferring cars intact between two terminals, requires the use of air brakes, especially where main line tracks are used.

There are no main line tracks in Hopewell except that leading into the classification yard from Bellwood. None of the movements in question used any part of this track. The movements in Hopewell switch cars to the various industrial spurs from the classification yard or switch them from the industrial spurs to the classification yard for assembly into trains. These movements certainly are not the transfer of cars between two terminals over main line tracks as in the *Thompson* case. They are switching movements, and the courts below properly held that air brakes need not be applied.

In *United States* v. *Panhandle & Santa Fe Ry. Co.*, 203 F. 2d 241 (5th Cir. 1953), again there were movements from one yard to another intact over main line tracks within defendant's Amarillo Yards, similar to the *Thompson* case, but totally dissimilar to this one. *United States* v. *South Buffalo R. Co.*, 168 F. 2d 948 (2d Cir. 1948), is the only one of these three cases which has any degree of factual similarity to the case at bar. In the *South Buffalo* case cars were transferred intact from one point to another about two miles away where they were broken up for further disposition. The Second Circuit, after admitting that it was a very close case, considered this movement to be a transfer movement requiring air brakes.

But the *South Buffalo* case never mentioned, much less relied on, what this Court said in the *Burlington* case was the test—the essential nature of the work done. Furthermore, neither of the two Court of Appeals cases decided in the Government's favor since the *South Buffalo* decision was handed down relied on that opinion to support its decision.

The *Pachuta* case does not even mention the *South Buffalo* case, and *Thompson* merely lists it with a series of others to be compared.

The failure of the *South Buffalo* case to look to the nature of the work done—the test laid out so long ago—has not gone unnoticed by other courts when called on to decide cases arising under the Acts. Its gratuitous abandonment of this essential test prevents it from being a precedent of any value. It is significant to note that in the six other circuit court cases decided in the past decade none have relied on the *South Buffalo* case as a basis for decision, not even the two cases finding for the Government. The decision is without honor even in its own circuit; in *United States* v. *Staten Island Rapid Transit Ry. Co.*, 151 F. Supp. 911 (D.C., E.D.N.Y. 1957), the District Court, after stating that the case before it was factually similar to the *South Buffalo* case, went on to hold that the movements it was considering did not require air brakes.

The four cases decided in the Courts of Appeal in the last ten years in which the railroads have prevailed consist of the present case and three cases in the Seventh Circuit. The most recent decision is *United States* v. *Terminal Railroad Association of St. Louis* decided by the Seventh Circuit on November 19, 1958, and reprinted in the Government's petition at p. 12. The movements there, from 1¾ to 2¼ miles in length, were quite similar to those in the present case. They were to industrial concerns served by defendant from its yards or the reverse. The court found that these were switching movements, just as the courts below found in this case.

United States v. *Chicago, Burlington & Quincy R. Co.*, 199 F. 2d 223 (7th Cir. 1952), *cert. den.* 345 U. S. 908 (1953); involved movements approximately two miles in

length which never came on main line tracks, just as in the instant case. The court held that these movements were switching movements.

The case most similar to Respondent's case is *United States* v. *Elgin, Joliet & Eastern Ry. Co.*, 182 F. 2d 1 (7th Cir. 1950). The railroad there maintained a yard in Gary, Indiana, principally to serve two large industries adjacent to the yard just as the Hopewell yard is maintained to serve industries there. Switching movements in the Gary yard were about the same distance as here, from the yard to the industries. The Seventh Circuit held that the essential nature of the work done in that yard was switching, and no air brakes were required.

Looking at these seven cases, asserted by the Government to be in such hopeless turmoil that a writ must be granted to straighten them out, it can be seen that in fact they follow two logical lines laid out by this Court. Those finding for the railroads, on the facts before them, are cases where the nature of the work done is switching. Those finding for the United States have looked at the nature of the work done and have found that the work done is transferring cars from one point to another rather than switching them. The distinction between switching cars and transferring cars was made by this Court nearly forty years ago and is a logical distinction which can be, and is, applied by the lower courts without need for any additional clarification from this Court.

The law as laid down by this Court is clear and is correctly applied by the lower courts. Any apparent confusion which exists can be seen on closer inspection to be the result of different factual situations and not different views of the law.

III.

Factual Variances in Air Brake Cases Diminish Their Precedental Value

Cases which will have great precedental value and which will settle points of law likely to arise quite frequently are worthy of careful consideration. We submit that this has been done by this Court in the four cases decided by it forty years ago. Because these air brake cases are all necessarily different factually by the very nature of the railroad industry, one case has little value as a precedent for others. The difficulty lies in applying the law as enacted by the Congress and clearly interpreted by this Court. In this case, the trial court and the Court of Appeals have correctly interpreted the law. The trial court's findings of facts when sitting without a jury may not be set aside unless clearly erroneous, and the evidence in this case amply shows they are without error. Rule 52(a), Federal Rules of Civil Procedure, *United States* v. *Yellow Cab Co.*, 338 U. S. 338 (1949). There is, therefore, no occasion for a review by this Court.

That other cases have but slight value as precedents in these cases because of the widely varying facts has been recognized by the courts. In *United States* v. *Panhandle & Santa Fe Ry. Co.*, 203 F. 2d 241 (5th Cir. 1953), the court said, at p. 246:

> "It is clear that since the statute involved provides no specific definition of a train, the courts are required to consider and determine each case upon its own facts. Consequently, it is a rare instance where precedents are of any clear and controlling effectiveness. . . ."

In the opinion in *United States* v. *Terminal Railroad Association of St. Louis*, decided by the Seventh Circuit on

November 19, 1958, and reprinted in Petitioner's brief at pp. 42-46, the court says, at p. 46:

> ". . . Although previous court decisions in this field may not be as binding as precedents in other areas of the law, we believe in the interest of consistency that the same results should be reached if the surrounding conditions are similar."

Each case must be decided on the facts presented in that particular case. As the Seventh Circuit said in *United States* v. *Chicago, Burlington & Quincy R. Co.*, 199 F. 2d 223 (1952), *cert. den.* 345 U. S. 908, at p. 226:

> "Neither Congress nor the Interstate Commerce Commission has seen fit to define the meaning of the word 'train' as employed in the Act. This perplexing problem unfortunately, so we think, has been left to the courts. After wrestling with it for some fifty years, courts have accomplished little other than to decide on the particular facts of the case whether the movement was that of a train within the meaning of the Act. *It is apparent, therefore, that a holding in one case carries little weight as a rule for decision in another.* Even when the facts of the case are disclosed, the question must depend largely upon the opinion or judgment of the court called upon to make a decision. And where the facts bring the case within the twilight zone, as we think they do in the cases before us, the opinion of one judge or court is likely to be as good as that of another." (Emphasis supplied)

The tests laid out in the *Erie*, *Burlington* and *Louisville & Jeffersonville* cases, *supra*, are just as clear as it is possible for words to make them. This particular field of law simply happens to be one where infinite variations in factual

situations of necessity occur. Since this is so, no one case can possibly be on "all fours" with any other.

CONCLUSION

Respondent urges the Court to consider the Government's petition carefully but then deny the writ because:

1. The tests as to when a given movement falls within the Safety Appliance Act and requires air brakes were laid down in four cases decided by this Court almost forty years ago. These tests are plain and clear and have served as satisfactory guides to lower courts for this whole period. This Court apparently agrees that the language of its prior decisions is clear and that the lower courts are properly applying the law, for it has denied writs of certiorari to review these cases ever since 1920, five times since then and twice in the past ten years.*

2. The asserted conflict between the circuits does not in fact exist. No conflicts have arisen on the interpretation of the Act; the factual situations vary from case to case to such an extent that the ultimate results will necessarily vary from case to case also. This, however, certainly does not give rise to a conflict between the circuits which this Court is called on to resolve by exercise of its certiorari discretion.

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* *Illinois Central Railway Co.* v. *United States*, 14 F. 2d 747 (8th Cir. 1926), *cert. den.* 273 U. S. 752 (1927); *United States* v. *Great Northern Railway Co.*, 73 F. 2d 730 (9th Cir. 1934), *cert. den.* 295 U. S. 752 (1935); *United States* v. *Southern Pacific Co.*, 100 F. 2d 984 (9th Cir. 1939), *cert. den.* 307 U. S. 633 (1939); *United States* v. *South Buffalo R. Co.*, 168 F. 2d 948 (2d Cir. 1948), *cert. den.* 335 U. S. 870 (1948); and *United States* v. *Chicago, Burlington & Quincy R. Co.*, 199 F. 2d 223 (7th Cir. 1952), *cert. den.* 345 U. S. 908 (1953).

QUESTION PRESENTED

Whether the provision of the Safety Appliance Act requiring power brakes on "trains" covers movements of units of an engine and twenty cars or more for uninterrupted distances of from one to two miles from a classification yard to industrial plants, and pickups from such plants for return to the yard.

STATUTES AND ORDER INVOLVED

The Act of March 2, 1893, c. 196, 27 Stat. 531, as amended, provided:[1]

> SEC. 1 [45 U.S.C. 1] * * * [I]t shall be unlawful for any common carrier engaged in interstate commerce by railroad to use on its line any locomotive engine in moving interstate traffic not equipped with * * * appliances for operating the train-brake system, or to run any train in such traffic * * * that has not a sufficient number of cars in it so equipped with power or train brakes that the engineer on the locomotive drawing such train can control its speed without requiring brakemen to use the common hand brake for that purpose.
>
> * * * * *
>
> SEC. 6 [45 U.S.C. 6] * * * [A]ny such common carrier using any locomotive engine, running any train, or hauling or permitting to be hauled or used on its line any car in violation of any of the provisions of this Act, shall be liable to a penalty of one hundred dollars for

[1] On August 14, 1957, the statute was further amended and the penalty was increased to $250 (71 Stat. 352, 45 U.S.C. (Supp. V) 6).

3. The very nature of the railroad industry is such that no two yards are completely alike; for this reason the precedental value of each case is extremely limited, and the courts will still continue to have to decide each case on a case by case basis. This Court should not consider a case which can have little as value as a precedent as this one.

Therefore, Respondent respectfully requests that this Court deny the petition for a writ of certiorari.

SEABOARD AIR LINE RAILROAD COMPANY

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> each and every such violation, to be recovered in a suit or suits to be brought by the United States attorney in the district court of the United States having jurisdiction in the locality where such violation shall have been committed * * *: *Provided*, That nothing in this Act contained shall apply to trains composed of four-wheel cars or to trains composed of eight-wheel standard logging cars where the height of such car from top of rail to center of coupling does not exceed twenty-five inches, or to locomotives used in hauling such trains when such cars or locomotives are exclusively used for the transportation of logs.

The Act of March 2, 1903, c. 976, 32 Stat. 943, amending the 1893 Act, provided:

> SEC. 2 [45 U.S.C. 9] * * * [W]henever, as provided in said Act [of March 2, 1893, *supra*] any train is operated with power or train brakes, not less than fifty per centum of the cars in such train shall have their brakes used and operated by the engineer of the locomotive drawing such train; and all power-braked cars in such train which are associated together with said fifty per centum shall have their brakes so used and operated; and, to more fully carry into effect the objects of said Act, the Interstate Commerce Commission may, from time to time, after full hearing, increase the minimum percentage of cars in any train required to be operated with power or train brakes which must have their brakes used and operated as aforesaid; and failure to comply with any such requirement of the said Interstate Commerce Commission shall be subject to the like penalty